



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,867	10/06/2003	Tetsuya Fukaya	KGMEP015	4382
22434	7590	01/07/2008	EXAMINER	
BEYER WEAVER LLP			TRAN LIEN, THUY	
P.O. BOX 70250			ART UNIT	PAPER NUMBER
OAKLAND, CA 94612-0250			1794	
			MAIL DATE	DELIVERY MODE
			01/07/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/680,867

Applicant(s)

FUKAYA ET AL.

Examiner

Lien T. Tran

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,9,10,12,13,15,16,18,19,21,22,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,9-10, 12-13,15-16,18-19,21-22,24-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1794

Claims 1,5,9-10,12-13,15-16,18-19,21-22,24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsen et al in view of Meyer and Goto et al..

Tsen et al disclose a process for the preparation of canned, retorted pastas. The process comprises the steps of placing the pasta in a container along with water, sealing the container, retorting the container at a temperature of at least about 110 degree C and pressures of at least 10 psi for a period of at least 10 minutes.

Tsen et al do not disclose the Fo value, sealing after treatment, increasing and releasing pressure cycles, the temperature and pressure differential, preliminarily sterilizing the surface of the pasta and adjusting the pH to 2.5-4.2.

Meyer teaches a method for sterilizing food using repeated cycles of increasing and releasing the pressure (see col. 2 line 45 through col. 3 line 22)

Goto et al disclose a process for preparing pasta sauce contained in a container. They teach sterilization treatment can be done before sealing the container, simultaneously with sealing the container or after sealing the container..

The Fo value can vary depending on the extent and degree of sterilization or pasteurization. In absence of showing of criticality or unexpected result, the Fo value a result-effective variable which can readily be determined by one skilled in the art to obtain the most optimum sterilization. In the Tsen et al process, it is obvious the pressure is released after retorting. As to the repeated increasing and releasing cycles, the concept of using repeated cycles of pressurization is known in the art as shown by Meyer. It would have been obvious to one skilled in the art to use repeated cycles of treatment depending on the degree of sterilization wanted. The extent of sterilization

Art Unit: 1794

can vary depending on the type of food and the microbial activity targeted. For example, some microorganism can survive high temperature and high pressure for a period of time; in such instance, it is necessary to repeat the treatment cycle to ensure complete destruction of the microbial activity. The use of repeated cycles, number of cycles, the pressure and temperature are all result-effective variable which can readily be determined by one skilled in the art through routine experimentation so that the most optimum result will be obtained. It would have been obvious to preliminarily sterilize the surface of the pasta and to steam after sealing to further enhance the shelf stability of the product. It would have been an obvious matter of choice to seal after or before retorting because both alternatives are known to be done as shown by Goto et al. The concept of using low pH to help in reducing sterilization or pasteurization treatment is well known in the art; it would have been obvious to one skilled in the art to use low pH water so that the sterilizing process can be shorten or less severe condition is used. It would have been within the skill of one in the art to determine the proper ratio of pasta and water.

In the response filed 10/22/07, applicant argues the increase in pressure in the claimed method is totally different from Meyer. The Meyer reference is only relied upon for the teaching of using repeated cycles. It would have been obvious not to use ultra high pressure if such process is not desired. Tsen teaches using a pressure of 10psi. Applicant further argues Meyer does not require the step of boiling and neither of the other two cites references mentions or hints at the occurrence of boiling. This argument is not persuasive. Tsen et al teach the steps of placing pasta along with a liquid such

Art Unit: 1794

as water into a container and subjecting the container to a retorting process at a temperature of about 110 degree C. This temperature is closed to the claimed temperature of 105 plus or minus 3 degree C. Thus, it is obvious boiling takes place in Tsen et al whether or not such fact is disclosed. Meyer is not relied upon for the teaching of boiling the pasta. The same is true with respect to the Goto et al reference. Applicant comments about the water at its boiling temperature would cover pasta in the manner disclosed is not understood because the claims do not recite anything about how the pasta is covered.

Applicant's arguments filed 10/22/07 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Art Unit: 1794

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 2, 2008


LIEN TRAN
PRIMARY EXAMINER
